

General Information Letter: Rulings on residency are not appropriate for general information letters.

December 31, 2007

Dear:

This is in response to your letter dated November 21, 2007. The nature of your request requires that we respond with a General Information Letter (GIL). A GIL is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), which may be accessed from the Department's web site at [www.ILtax.com](http://www.ILtax.com).

Your letter states as follows:

I request a private letter ruling on the following circumstances. I have provided the pertinent facts in paragraphs numbered according to the requirements spelled out in Title 02, Part 1200, Section 1200.110.

The general question I wish answered is whether or not I am considered a resident of Illinois for tax purposes, and whether I owe taxes on my federal income received in COUNTRY1 for 2007 (or am entitled to a refund of taxes paid in 2005 and 2006). Secondly, if it is determined that I owe Illinois taxes for 2007, I wish to determine if my wife, a recently naturalized US citizen who lives with me in COUNTRY1 and has never had a domicile within the United States, should include her income on an Illinois return.

I, Mr. Z, SSN XXX-XX-XXXX, lived in Illinois from October 1998 until April 2004. During the latter part of my time in Illinois, I was employed by the Department of the Air Force at NAME1 AFB as a civilian employee. In April of 2004, I received an assignment to NAME2 Air Base, in COUNTRY1. Since then, I have been reassigned to NAME3 AB and NAME4 AB, also in COUNTRY1. I left Illinois in April 2004, and except for brief trips to visit family and friends, have not returned to the state. I own a manufactured home in TOWN which I purchased for the express purpose of renting to my former spouse to provide a safe home for my daughter. I have lost money on the rental property in each of the last three years, and expect to lose money on it again this year. I plan to sell this property in 2008, and would expect to owe Illinois taxes on any capital gain. Although I have the right to return to my job at NAME1 AFB, it is very unlikely that I will do so, as it is a lower-graded position than the one I presently occupy. I maintain an Illinois drivers license as I must have a valid US state license to use with my military-issued European license. I also have continued to vote in Illinois as I do not have another jurisdiction in which I am eligible to vote.

My wife, Mrs. Z, SSN XXX-XX-XXXX, who I married in January 2005, was formerly a citizen of the COUNTRY2. As of January 17, 2007, she was naturalized as a US citizen. She has lived with me in COUNTRY1 since our marriage in 2005. Since our marriage, she has had income from a COUNTRY1 employer which was subject to the federal foreign earned income exclusion. As of this month, however, she is employed by an agency of the United States government, and will have US tax liability on her income.

To my knowledge there are no relevant contracts, licenses, instruments, or other relevant documents.

I am inquiring specifically for tax year 2007, and also for tax years 2005 and 2006, periods when I paid Illinois income taxes. There are no audits or litigation pending with the Department.

To the best of my knowledge, the Department has not ruled on this matter for me or a predecessor. I have filed no prior formal requests with the Department. I have submitted a request for information through the IDOR website, but have not obtained a satisfactory answer.

I believe the following authority applies to this situation: 86 Ill. Adm. Code 100.3020(f) which states as follows:

f) presumption of residence and nonresidence. If an individual spends in the aggregate more than nine months of any taxable year in Illinois it will be presumed that he is a resident of Illinois. An individual who is absent from Illinois for one year or more will be presumed to be a nonresident of Illinois. These presumptions are not conclusive, and may be overcome by other satisfactory evidence to the contrary.

I have not been able to determine any contrary authorities.

There is no trade secret information pertinent to this request.

## **RULING**

Section 1501(a)(20) of the Illinois Income Tax Act ("IITA" ; 35 ILCS 5/1501(a)(20)) defines the term "resident" to include an individual:

- (i) who is in [Illinois] for other than a temporary or transitory purpose during the taxable year; or
- (ii) who is domiciled in [Illinois] but is absent from the State for a temporary or transitory purpose during the taxable year.

Department of Revenue Regulations Section 100.3020(b) describes the purpose of the definition.

The purpose of the general definition is to include in the category of individuals who are taxable on their entire net income, regardless of whether derived from sources within or without Illinois, all individuals who are physically present in Illinois enjoying the benefit of its government, except those individuals who are here temporarily, and to exclude from this category, all individuals, who, although domiciled in Illinois, are outside Illinois for other than temporary and transitory purposes, and hence, do not obtain the benefit of Illinois government. If an individual acquires the status of a resident by virtue of being physically present in Illinois for other than temporary or transitory purposes, he remains a resident even though temporarily absent from Illinois. If, however, he leaves Illinois for other than temporary or transitory purposes, he thereupon ceases to be a resident. If an individual is domiciled in Illinois, he remains a resident unless he is outside Illinois for other than temporary or transitory purposes.

Department of Revenue Regulations Section 100.3020(c) describes the phrase "temporary or transitory purposes" as follows:

Whether or not the purpose for which an individual is in Illinois will be considered temporary or transitory in character will depend upon the facts and circumstances of each particular case. It

can be stated generally, however, that if an individual is simply passing through Illinois on his way to another state, or is here for a brief rest or vacation, or to complete a particular transaction, or perform a particular contract, or fulfill a particular engagement, which will require his presence in Illinois for but a short period, he is in Illinois for temporary or transitory purposes, and will not be a resident by virtue of his presence here. If, however, an individual is in Illinois to improve his health and his illness is of such a character as to require a relatively long or indefinite period to recuperate, or he is here for business purposes which will require a long or indefinite period to accomplish, or is employed in a position that may last permanently or indefinitely, or has retired from business and moved to Illinois with no definite intention of leaving shortly thereafter, he is in Illinois for other than temporary or transitory purposes, and, accordingly, is a resident taxable upon his entire net income even though he may also maintain an abode in some other state.

Department of Revenue Regulations Section 100.3020(d) sets forth the meaning of the term "domicile."

Domicile has been defined as the place where an individual has his true, fixed, permanent home and principal establishment, the place to which he intends to return whenever he is absent. It is the place in which an individual has voluntarily fixed the habitation of himself and family, not for a mere special or limited purpose, but with the present intention of making a permanent home, until some unexpected event shall occur to induce him to adopt some other permanent home. Another definition of "domicile" consistent with the above is the place where an individual has fixed his habitation and has a permanent residence without any present intention of permanently removing therefrom. An individual can at any one time have but one domicile. If an individual has acquired a domicile at one place, he retains that domicile until he acquires another elsewhere. Thus, if an individual, who has acquired a domicile in California, for example, comes to Illinois for a rest or vacation or on business or for some other purpose, but intends either to return to California or to go elsewhere as soon as his purpose in Illinois is achieved, he retains his domicile in California and does not acquire a domicile in Illinois. Likewise, an individual who is domiciled in Illinois and who leaves the state retains his Illinois domicile as long as he has the definite intention of returning to Illinois. On the other hand, an individual, domiciled in California, who comes to Illinois with the intention of remaining indefinitely and with no fixed intention of returning to California loses his California domicile and acquires an Illinois domicile the moment he enters the state. Similarly, an individual domiciled in Illinois loses his Illinois domicile: 1) by locating elsewhere with the intention of establishing the new location as his domicile, and 2) by abandoning any intention of returning to Illinois.

The above regulations make evident that whether an individual ceases to be a resident of Illinois upon the basis of leaving the State for other than a temporary or transitory purpose is a factually intensive inquiry that necessitates consideration of all the facts and circumstances in each particular case. Consequently, the Department does not issue private letter rulings as to residency. However, if you believe that your 2005 and 2006 Illinois returns were filed in error, you may file a claim for refund by submitting Form IL-1040-X for the 2005 and 2006 taxable years, including a statement that the basis for your claim is that you were a nonresident. You will also need to attach Schedule NR to the Forms IL-1040-X indicating whether any nonresident income is allocable to Illinois. The form and schedule may be accessed from the Department's web site at <http://tax.illinois.gov/taxforms/>.

Your letter indicates that your wife has never had a domicile within the United States, and currently lives in COUNTRY1. Under these facts, your wife would not be a resident of Illinois, and would not be liable for Illinois income tax unless some of her income is allocable to Illinois as provided under the provision of Article 3 of the IITA. In this regard, note that if you are determined to be an Illinois resident, IITA Section 502(c)(3) provides:

If either husband or wife is a resident and the other is a nonresident, they shall file separate returns in this State on such forms as may be required by the Department in which event their tax liabilities shall be separate; but they may elect to determine their joint net income and file a joint return as if both were residents and in such case, their liabilities shall be joint and several.

As stated above, this is a GIL. A GIL does not constitute a statement of policy that applies, interprets or prescribes the tax laws, and it is not binding on the Department. If you have further questions regarding this GIL, please call (217) 782-7055. If you have additional questions regarding Illinois income tax laws, please visit the Department's web site at [www.ILtax.com](http://www.ILtax.com).

Sincerely,

Brian L. Stocker  
(Associate Counsel – Income tax)